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Supreme Court, U.S.
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Docket No._____

IN THE SUPREME COURT OF THE UNITED STATES

CALVIN P. ROACH
PETITIONER
v.
TERRI L. ROACH
RESPONDENT
Attorney: Michael Farro

ON PETITION FOR WRIT OF CERTIORARI
FROM ARIZONA COURTS OF APPEAL
DIVISION II
CASE: 2A CV –2000-0215
March 08, 2005
October Term beginning October 2004.

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Pro Se

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Questions Presented

I. Whether the Arizona Courts of Appeal properly affirmed that I am obligated to pay additional Dental and Medical insurance when my son is covered under my military benefits and is covered under Tricare dental and medical plans for retired military?

II. Whether the Arizona Courts of Appeal properly failed to consider false claims and perjured statement for child-support made by her and her attorney?

III. Was the Arizona Courts of Appeal correct by accepting the Trial judge determination of how military retirement is to be divided?

IV. Whether the Arizona Courts of Appeal was correct in not recommending to the State Supreme Court the sanctioning of Mr. Farro conspiracy for misstating federal and state laws that resulted into me occurring financial damage?

V. Did the Arizona Courts of Appeal err by not removing Honorable Judge Desens from this case for abuse of process?

VI. Whether the Arizona Courts of Appeals can allow a pro se litigant be prejudiced by the government (Judge) because the judge failed to follow State Statute ARS 25-403 (J)?

VII. Can the State Courts violate family members 14th amendment rights by allowing the mother to receive child-support from one parent and not the other when the mother could have filed for support from the other parent or the Court give me, primary custody of Jarod?

List of Parties:

The parties to the Federal Questions are Terri Roach and her attorney Michael Farro and Superior Court Judge, Hon. Judge Desens.

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IN THE SUPREME COURT OF THE UNITED STATES

CALVIN P. ROACH

PETITIONER

v.

TERRI L. ROACH

RESPONDENT

OPENING PETITION FOR WRIT OF CERTIOARI

ARIZONA COURTS OF APPEAL

Case #: 2A CV-2000-0215

OPINION BELOW

The opinion of the court of appeals 2A CV-2000-0215.

CITIATION TO OFFICIAL AND UNOFFICIAL REPORTS

Courts of Appeals Decision

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14th Amendment, Section I

Bulchalter v. People of New York, 319 US 427 (1943)

Goldberg v. Kelly, 397 US 254 (1970

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Danielson v. Evans, 201 Ariz. 36 P.3d 749 (App. 2001)

Diezi v. Diezi, 201 Ariz. 524; 38 P. 3d 1189 (2002)

Owen v. Blackhawk, 206 Ariz. 418 (2004)

JURISDICTION

The United State Supreme Court has jurisdiction over all state court decisions under the United States Constitution, a state court as a last resort decided important federal question that conflicts with the United State Supreme Court and the highest state court rendered a decision and review by State Supreme Court not reviewed. This review is pursuant 28 USC 1257. The Courts of Appeals decision was entered on November 24, 2003 and the State Supreme Court denied review on August 19, 2004.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following are provisions and statutes are: United States Constitution Amend XIV, 10 USC 1408,10 USC 1072, ARS 25-320 and ARS 25-403.

STATEMENT

On May 19, 2000, I Calvin Roach filed for a divorce against Terri Roach. I hired attorney Gary Raemaker and she hired attorney Michael Farro. On August 21, 2000 we went to temporary custody hearing and the issue about me being arrested for domestic violence and a possible conviction was possible. At that hearing attorney Farro stated that his client earned $2000 per month. When his client was cross-examined attorney Farro stated that he made a mistake about the income and that his client earned about $2900. It was proven Mr. Farro's client earned about $500 more. On 24 October 2000, we entered into a custody agreement and the attorneys stated that I am obligated by federal law to pay my wife $74.00 of my military retirement and I will maintain military Tricare health and dental on both children; also, I will received normal visitations with my son and stepson, and have midweek visitations with them. I then filed a bar complaint against the opposing attorney for misconduct and after my attorney got word that action he quite and filed a

Motion to Withdraw, the court granted his request. I then got convicted in trial for domestic violence. The State Bar informed me to address this sanction to the judge.

On October 16, 2001 we went to trial. Attorney Farro and my ex-wife used that conviction as justification to reduce my visitations with my son and stepson. Terri also made claims of needing an extra $100 for child-care and programs that my son Jarod was in and that she wanted to keep him in those programs. I entered evidence that contradicted her claims. She and her attorney also requested that I pay for medical and dental for my son Jarod even though he received Tricare medical and dental that is a military benefit. Her attorney Farro stated to the court that the law states that I am to pay portions of my retirement along with cost of living increases. I informed the court that my conviction was unconstitutional.

On November 13, 2001, the court entered a minute entry granting Terri sole custody but did not grant her any portions of my retirement. The court also instructed that attorney Farro to prepare the decree to be consistent with the order. The attorney created a decree and added portions of my retirement pay to it. The conviction was vacated on grounds Rule 24.2 of Arizona Rules Criminal of Court, violation of constitutional rights.

On May 2, 2001, I appealed the order entirely and that I was convicted for the divorce. The issues include dividing of property was not equitable, fraud, and racketeering attempts, retirement calculation, paying additional dental and medical, and judicial and attorney prejudice and misconduct. November 24, 2003, the Court of Appeals rendered a decision. The Court of Appeals stated that in her testimony she states that she made $3450 per month therefore there was no perjury or deception. The court of appeals findings were that there was no fraud or errors in the court with the exception that the court should not have made me pay double

life insurance on my son because my son is covered under my military benefits. I filed a motion for review and the court denied it on December 17, 2003. On January 2, 2002, I filed a motion to suit in Federal Court for racketeering and a Motion to Stay to the time limit. On April 29, 2004 the Federal Court dismissed the suit under of the Rooker-Feldman doctrine only. I appealed to the Ninth Circuit Court. On May 5, 2004 I filed a Motion for Review to Arizona Supreme Court and on August 19, 2004 the Court denied to review. Federal questions I, II, and III and VII were addressed in to the Courts of Appeal (Opening Brief). Questions IV, V and VI were derived from the Courts of Appeals decision and the State Supreme Court refused to review the questions.

DISCUSSION

The Superior Court ordered that I pay my ex-wife additional monies to cover my son Jarod for medical and dental. Jarod is covered for medical and dental under my military benefits Tricare plan. I do not feel that I should be obligated to have my son under two medical and dental plans; especially since they both are plans offered to federal employees and my son is covered once already. The Court of Appeals states that the amount should be prorated. Under federal law my son is covered until at least he reaches the age of 18 under the federal Tricare medical and dental plans that are part of my military retirement benefits. ***10 USC 1072 (2) (D),***

> ***"A Child who -... ii. has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support;"***

Because Jarod is my biological son, he is automatically covered under federal Tricare for dental and medical and I should not be have to pay for Terri's supplemental medical and dental plans. When an attorney the judge represented the opposing attorney and me followed federal law by not having me to pay additional monies for dental and medical but as soon as the attorney quit, the judge and attorney ignores federal laws.

The Trial judge failed to review evidence that was submitted to the court and considered testimony from Terri Roach that I proved the amount of child-care was erroneous. On pages 14 thru 16 of the opening brief to the Court of Appeals I showed mathematically where my ex-wife claims was false and enormous. I did submit evidence to the trial judge to prove that her claims were false. The Court of Appeals states that this act was a harmless error. Harmless for whom, my

attorney took time out to discover the misconduct and fraudulent attempts made by attorney Farro and I had to pay my attorney for those services. Nowhere in legal doctrine does judicial absolute immunity relieve the attorney from discipline; it only relieves the judge from being sued for financial damages.

Mr. Farro again failed to apply his client's appropriate income in the Court Trial and figured my retirement owed to his client above what I was obligated to pay under federal statutes; that resulted in me paying his client more child-support money and retirement pay.

The Court of Appeals stated that I did not cite anything about Terri making $3800 per month nor was there anything in the record to support that allegation. I feel that was a cover-up attempt because on page 14 -16 of the Opening Brief. I referenced her pay stub and calculated that she is earning more than $3800 per month. The pay-stub that she entered to the Court stated that she made $26,406 ending pay period 15 and by using simple math it results to about $3814 per month. The Court of appeals stated that there was nothing in the record to assert my claims that Terri stated she made $3800 per month. The document is Terri's pay stub that her attorney entered into evidence and is part of the pretrial statements. Terri's pay stub states at the end of 15 pay periods that she earned $26,406.94 and has 26 pay periods per year. That amount to more to about $3814.00 per month and that is the rate the child support is to be figured out as. The Court of Appeals also stayed that I am the medical and dental plan was not calculated properly and that I was paying too much. All the intended violations of law by the trial judge increase my child-support obligations by almost $800 a year. I shall demonstrate below.

The first assumption assumes that I am obligated to pay $94.70 for dental and medical. My retirement is based on 14% of the disposable amount. The disposable amount is

retirement ay minus survivor benefits minus taxes, ***10 USC 1408*** and the US Supreme Court stated the same in ***Mansell v. Mansell, 490 US 581 (1989)***.

> ***"Footnote: 3. Also deducted from total military retirement pay are amounts: (a) owed by the military member to the United States; (b) required by law to be deducted from total pay, including employment taxes, and fines and forfeitures ordered by courts-martial; (c) properly deducted for federal, state, and local income taxes; (d) withheld pursuant to other provisions under the Internal Revenue Code; (e) equal to the amount of retired pay of a member retired for physical disability; and (f) deducted to create an annuity for the former spouse. 10 U.S.C. §§ 1408(a)(4)(A)-(F) (1982 ed. and Supp. V)."***

The $363.23 is then multiplied by .14 and that $50.85 is the amount owed for retirement.

My monthly pay is $6072.28 according to documents sent to the court. My retirement Pay is $1131.00 gross. My net income is regular pay + retirement - retirement paid to my ex-wife and that is $7152.43. Terri's pay is $3814.34 + $50.85 = $3865.19. Her deduction for having a son from another relationship will be deducted from that and that amount is $641and that sub amount is $3224.19. The total income between us two is $10,376.60 and this amount goes on line 13 of the child support guidelines. The total obligation is $1191.00. In this scenario I will add the fraudulent amount of $94.70 and use $52.00 for child-care cost instead of the bloated $100.00. The $52.00 was derived in my Opening Brief to the Arizona Court of Appeals. That adds an additional $146.70 to the child support obligation; therefore, the new obligation amount is $1337.70 and that is added to line 23 of the child support worksheet. I am percentage that I am obligated to pay is

$7152.43/$10,376.60 = 69% and Terri is obligated 31% (line 26 of the child support worksheet). Line 29 equals the percentage multiplied by the total obligation that results are $931.07. The visitation discount is .105 multiplied by 1191 and that amount is 125 subtracted from the $922.53; therefore, under the conditions that if I did not have military benefits and my son was not subjected to receiving those benefits my obligations would be $797.53. The reason that I am paying is not because of mathematical error, it is because Mr. Farro borage of lies and false statements in all of the hearing of this case. After subtracting the credit for visitation I should be obligated to pay $741.00 if I was to pay dental and medical. Arizona Child Support guidelines are described in ***ARS 25-320***. The reason that I am paying more than the guidelines is not because of mathematical error, it is because Mr. Farro borage of false statements in all of the hearing of this case. Court Transcripts support this statement, Custody Hearing on 21 Aug 2000, the documents that Mr. Farro submitted to the courts prior to the hearing and the Court Trial hearing. He also stated that I was to pay cost of living allowances on top of my retirement that was improperly calculated because if it was a fixed amount cost of living adjustments are not authorized, ***Mansell v. Mansell, 490 US 581; 109 S. CT. 2023***.

Mr. Farro and at the time my Attorney, Mr. Raemaker conspired together prior to the Stipulations hearing dated 24 August 2000 and stated I had to pay my ex-wife a certain amount of my retirement. The amount was erroneous. The amount they calculated only reduced my retirement pay less disability. I did not know the law at the time and was dependent upon my attorney being fair and working for me. In the stipulation hearing he told the judge of the amount I was obligated to pay. After I begun questioning my attorney over Mr. Farro's misconduct my attorney quit. In the Trial Mr. Farro told the judge and myself that under the law I was suppose to pay my ex-wife what him and Mr. Raemaker had

figured as well as cost of living. Mr. Farro misstated the law because what he and Mr. Raemaker figured did not comply with the law, ***10 USC 1408***. The federal government has a website that explains to attorneys how to calculate military retirement. This site can be navigated to by going to URL http://www.dfas.mil and at the top of the page click on "money matters" and on the next page click on "garnishments". From that page click on "Attorney Instructions for dividing military retirement and sample language for court orders." The correct calculation was my retirement, less disability and survivor benefits and state and federal taxes. The two attorneys conspired against my military benefits. The Courts of Appeals stated that I agreed to that amount, I agreed to the law and Mr. Farro perjured himself in describing what the law stated.

On November 13, 2001, the trial judge made findings in a minute entry stating that the Court accepted stipulations of the parties and then stated what those stipulations were. The court did not state my retirement as part of the stipulations accepted but the opposing party entered that on the Order for the judge to sign without filing a Motion for Reconsideration.

The Court of Appeals stated that military retirement is calculated less disability pay to justify the amount of money that I was paying in child-support from August 24, 2000 hearing and October 16, 2001 trial. The amount I was paying was determined by my attorney and my ex-wife attorney and was 14% of my gross amount less my disability. Attorney Farro stated in the trial that I was also required to pay increases to that amount and that was the law. I agreed to the law stating what his client was entitled to. Federal law states that his client is entitled to gross amount less all money owed to the government, survivor benefit plan, and disability, which is considered to be disposable pay, ***10 USC 1408***. This was cited to the Court of Appeals. The Court of Appeals cited ***Danielson v. Evans, 201 Ariz. 401, 36 P.3d 749 (App.***

2001) stating that under the statute disposable pay excludes disability benefits, but they fail to state the other deductions such as State and Federal Taxes and Survivor Benefit Plans which are authorized under federal statute *10 USC 1408*. The United States defined disposable pay in ***Mansell v. Mansell, 490 U.S. 581; 109 S. Ct. 2023; 104 L. Ed. 2d 675, (1989)***

> **"(B) are required by law to be and are deducted from the retired or retainer pay of such member, including fines and forfeitures ordered by courts-martials, Federal employment taxes, and amounts waived in order to receive compensation under title 5 or title 38 [disability payments]." § 1408(a)(4)(B)."**

The ***United States Constitution, 14th amendment Section 1*** guarantees me a fair and impartial judge and equal protection of law **Goldberg v. Kelly, 397 US 254 (1970)**. I was not granted either and am surrounded by judges that prejudice men in family court. Hon. Judge Desens was not fair nor was he impartial, allowing the opposing party to perjure themselves over income and child-care amounts, and ignore evidence and testimony. Hon. Judge Desens also allowed Mr. Farro and Mr. Raemaker to conspire having me pay my ex-wife more retirement money than I was obligated to pay. On August 24, 2001 hearing the attorneys stated that would get normal visitations with midweek visitation with my son and stepson that was part of the agreement but they intentionally left off the Columbus Day federal holiday because of the possibility of it falling on my ex-wife birthday.

Hon. Judge Desens allowed inundation of violations to commence so that when I appeal; there will be so many violations that I would be viewed as a crybaby with no merit. It is also common-practice in Cochise County for judges not to abide by the law when it comes to giving custody to the father or just being fair to the father in divorce cases. Hon.

Judge Hoggart made it clear that he felt the law was to harsh on women and told the father that even though his ex-wife was convicted of drugs that he was not getting custody of his daughter, ***Diezsi v. Diezsi, 201 Ariz. 524; 38 P.3d 1189.*** ***" In its order, the trial court stated that the presumption in subsection (K) was "quite harsh," but specifically found that neither of the two factors in subsection (L) that may rebut the presumption "was shown by the evidence." Relying on the specific language of subsection (K), the court found that the presumption was inapplicable "by its own terms" because Christina's drug conviction had been entered on May 16, 2000, some two months after, not within twelve months before, Liam had requested the change of custody.***

P8 We agree that the precise language in (K) that the parent's drug conviction occur "within twelve months before the petition [*6] or the request for custody is filed" precludes application of the statutory presumption in determining whether to change custody. We do not agree, however, that the trial court was free to disregard the legislative intent and public policy evident in (K), as it apparently did. Clearly, the legislature intended to give notice to a convicted parent that a trial court must consider any drug conviction entered within twelve months prior to the filing of a request to change custody. And, because that purpose is clear, it must be equally clear that a drug conviction entered even closer to the date of a custody hearing is relevant to a custody determination. Moreover, the language of § 25-403(L) explicitly underscores the gravity of a recent drug conviction as a factor in determining custody."

Cochise County Court continues to be tilted for the women where Hon. Judge Irwin having alcohol in his chambers and making sexual comments, those are the acts that he admitted to committing **JC-00-0003**, but strong rumors are that he had

the court recorder change court transcripts to fit his rulings against men, and ask women out for dates.

The trial court did not find me to be of any danger to my son and gave my ex-wife custody of my son. In doing so the Court violated my 14th amendment rights of equal protection of law. My ex-wife never made her oldest son Justin father pay any child-support or have she made any attempt to have him to pay child-support, but I am being ordered to pay support. The court actions violated the ***14th Amendment, section 1.***

> ***"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."***

All family members rights could have been protected if I was awarded primary custody of my son Jarod; therefore, not promoting benefits to women who have illegitimate children. The Courts of Appeals recognized that even though a person can be convicted of domestic violence, he can receive custody of his child and the court didn't find me to be negative to the best interest to my son. On the other hand the court accepted in a stipulation of orders dated 24 Aug 2000, that I receive normal visitations, as well as mid-week visitations and that Terri could only use a babysitter to watch the children if I can't see them, other than that I will watch my son and my ex-step-son. The wish of his mother is to have me to pay support Jarod but Justin's father have no obligations to his son. Do Justin and his father have a

fundamental right to know that each other exist and his father the right to support and raise his child?

The Court of Appeals violated the same clause by not considering ***ARS 25-403(J),***

> ***"In a contested custody case, the court shall make specific findings on the record about all relevant factors and the reason for which the decision is in the best interest of the child"***

In ***Diezsi v. Diezsi, 201 Ariz. 36 P.3d 749 (2001)***, the Court of Appeals considered ***ARS 25-403(J)*** because the judge failed to make specific findings.

> ***"P4 When determining custody, initially or on request for modification, a trial court must comply with § 25-403(A). n1 "In a contested custody case, the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child." § 25-403(J)."***

The statute does not give the judge an option to make specific findings in stead it obligates the judge. The Courts of Appeals is punishing me because the judge failed to comply with the law. In my case the Court of Appeals failed to consider **ARS 25-403(J)** and the State actions must consistent, ***Bulchalter v. People of New York, NY, 63 S. Ct. 1129, 319, US 427, 87 L.Ed. 1492, (1943).***

In ***Owen v. Blackhawk, 206 Ariz. 418 (2004)*** where the father argued that the judge do not have to make specific findings, the Courts of Appeal stated that the judge had to make specific findings; the Courts of Appeal violated my US Constitutional Rights, supra ***14th Amendment, section 1.*** Even if my conviction was not vacated because the state violated my US Constitutional Rights, I should have received custody of my son whom I was the primary caregiver until these legal actions began.

REASONS FOR GRANTING THIS WRIT OF CERTIORARI

The State Court has decided this case that conflict with federal and military laws, and allowed attorneys to misstate federal law and induce clients to commit perjury and fraud. If these abuses by the state are to prevail, why should the citizen of the United States have confidence in the state legal system? This writ addresses the important questions of law and judicial misconduct; especially, if a judge fails to do his adhere to the law it is unjust to hold a pro se litigant responsible. This writ shows judges disregarding family state laws and evidence to promote personal biases even if the bias allows a person to use the state judicial system to commit fraud.

CONCLUSION

I request that this court remand to the State directions to remove Hon. Judge Desens from this case as well as sanction. Also Mr. Farro be held responsible for State and Federal violations of my federal entitlements and US Constitutional rights; also that my military retirement be figured in accordance with federal law and I be paid all of the monies I was juke out of and a new custody with an unbiased judge. For the foregoing reasons the petition for writ of certiorari should be granted.

Respectfully submitted this 08 day of March 2005.